



UNITED STATES GOVERNMENT  
**NATIONAL LABOR RELATIONS BOARD**  
FREEDOM OF INFORMATION ACT BRANCH  
Washington, D.C. 20570

Via email

June 6, 2023

Re: FOIA Request NLRB-2023-001377

Dear Amanda O'Brien ([www.law.com](http://www.law.com)):

This is in response to your request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received on May 8, 2023, in which you initially sought “a copy of records relating to” *Morgan & Morgan Philadelphia, PLLC*, Case No. 04-CA-314795 and *Morgan & Morgan Atlanta, PLLC*, Case No. 10-CA-232305, including but not limited to “any responses filed by Morgan & Morgan, all dating from 12/07/2018 up to the present.”

We acknowledged your request on May 8, 2023. In telephone conversations with a member of the FOIA staff on May 16 and 17, 2023, regarding Case No. 10-CA-232305, you narrowed the scope of your request to the unfair labor practice charge, all records submitted by the Employer to the Regional Office, the settlement reached by the parties, and the Regional Director's letter to the parties approving withdrawal of the charge.

Your request is denied in part and granted in part, as explained below.

After conducting a search of the Agency's electronic casehandling system, and in connection to Case No. 04-CA-314795, which I have confirmed is currently a pending case before the Agency's Region 4 office, I have determined that certain of the records responsive to your request are part of an open investigative file, and are therefore exempt from disclosure pursuant to FOIA Exemption 7(A). 5 U.S.C. § 552 (b)(7)(A). Exemption 7(A) allows an agency to withhold records included in an open investigatory file where disclosure could reasonably be expected to interfere with enforcement proceedings. See *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 236 (1978). Therefore, given the open status of the investigation in the Region, the investigatory records in the Case No. 04-CA-314795 file are being withheld in full at this time pursuant to Exemption 7(A).

Your request is granted to the extent that I have attached the formal records in open Case No. 04-CA-314795, which are available to the public pursuant to NLRB FOIA regulations regardless of the open or closed status of a case. As to any remaining non-formal case records, please note that Exemption 7(A) protection is “temporal in nature.” *Citizens for Responsibility & Ethics in Wash. v. Dep't of Justice*, 746 F.3d 1082, 1097

(D.C. Cir 2014) (citing *NLRB v. Robbins Tire*, 437 U.S. 214, 223-24 230-32 (1978)). As such, additional case file records may become disclosable, subject to applicable exemptions, after the case closes, that is, once a Board decision and/or court order issues, there has been full compliance with a settlement, or the case has otherwise been closed under Agency procedures. Accordingly, you may wish to file a new request at that time.

The status of Case No. 04-CA-314795 can be tracked on the Agency website at [www.nlr.gov](http://www.nlr.gov) by going to the Cases & Decisions tab, clicking case search, entering the case number in the search box and viewing the case page or by clicking the link here: [Morgan & Morgan Philadelphia, PLLC | National Labor Relations Board \(nlrb.gov\)](#)

Regarding Case No. 10-CA-232305, which is closed, and where you narrowed to the unfair labor practice charge, all records submitted by the Employer to the Regional Office, the informal settlement agreement reached by the parties, and the Regional Director's letter to the parties approving withdrawal of the charge, the requested records are attached and have been redacted, as explained below.

Upon my review of all of the attached records, redactions have been made to certain information to protect the privacy interests of individuals named in the records. These redactions were made pursuant to FOIA Exemption 6, which pertains to information the release of which would constitute a clearly unwarranted invasion of personal privacy; and FOIA Exemption 7(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(6) and (b)(7)(C).

For the purpose of assessing fees, we have placed you in Category C, as a representative of the news media, in that you qualify as a person "actively gathering news for an entity that is organized and operated to publish or broadcast news to the public." NLRB Rules and Regulations, 29 C.F.R. § 102.117(d)(1)(vii). Accordingly, there is no charge assessed for this request.

You may contact Patrick Plummer, the Attorney-Advisor who processed your request, at 202-273-2999 or by email at [patrick.plummer@nlrb.gov](mailto:patrick.plummer@nlrb.gov), as well as the Agency's FOIA Public Liaison, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the Attorney-Advisor, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the Agency's FOIA Public Liaison is:

Kristine M. Minami, FOIA Public Liaison  
National Labor Relations Board  
1015 Half Street, S.E., 4<sup>th</sup> Floor  
Washington, D.C. 20570

June 6, 2023

Page 3

Email: FOIAPublicLiaison@nlrb.gov

Telephone: (202) 273-0902

Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, Maryland 20740-6001  
Email: ogis@nara.gov  
Telephone: (202) 741-5770  
Toll free: (877) 684-6448  
Fax: (202) 741-5769

You may obtain a review of this determination under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at: <https://foiaonline.gov/foiaonline/action/public/home> or by mail or email at:

Nancy E. Kessler Platt, Chief FOIA Officer  
National Labor Relations Board  
1015 Half Street, S.E., 4<sup>th</sup> Floor  
Washington, D.C. 20570  
Email: DLCFOIAAppeal@nlrb.gov

Any appeal must be postmarked or electronically submitted within 90 calendar days of the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Please be advised that contacting any Agency official (including the Attorney-Advisor, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

*/s/ Synta E. Keeling*

Synta E. Keeling  
FOIA Officer

Attachment: (39 pages)